IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3699 OF 1992.

1. Smt. Subhadrabai Shankar Raut, age about 65 years, occupation household, residing at 384A, Kasbapeth, Pune - 411 011. 2. Shri Vinayak Shankar Raut, age about adult, occupation business residing as above. 3. Shri Prakash Shankar Raut, age about 39 years, occupation Agriculturist, residing as above. 4. Shri Vilas Shankar Raut, age about 34 years, occupatiohn business, residing as above.	.. Petitioners (Ori. Pltffs.)
Versus	
Shri Manohar Baliram Bhavsar, age about 59 years, occupation service, residing at 485 Kasbapeth, Pune - 411 011.	.. Respondent (Ori. Defdt.)

Mr. Mahesh Subramanium i/b Mr. S.V. Pitre for the petitioner.

Mr. G.M. Khembete for the respondent No.1.

CORAM: ANOOP V. MOHTA, J.

DATED: 22ND JULY, 2005

ORAL JUDGMENT. :

1. The Petitioners are landlords. The respondent is tenant. Pursuant to their relationship of landlord and tenant, petitioners filed suit No.710 of 1982 in the

Small Causes Court, Pune (for short "Trial Court") on 5th April, 1982, for possession of the suit premises on the grounds of arrears of rent and acquisition of suitable accommodation. It was resisted. The evidence was led by the parties. The Trial Court, after considering the material on the record, by its judgment and order dated 23rd August, 1985, dismissed the Suit. The Additional District Judge, Pune (for short "Appellate Court"), by judgment and order dated 14th October, 1991, in the Appeal filed by the petitioner, confirmed the said order of dismissal of the suit. An application Exhibit-25 dated 4th October, 1991, which was moved by the petitioners-landlords to bring additional material on the record, was also dismissed before the impugned judgment came to be passed. Petitioners, therefore, have preferred the present Writ Petition.

2. Heard Mr. Mahesh Subramanium, learned counsel for the petitioners-landlords and Mr. G.M. Khembete, learned counsel for the respondent.

3. After going through the reasoning given by the Courts below, and after perusal of those reasoning with the assistance of the learned counsel appearing for the parties, I see there is no case made out by the

petitioners-landlords to interfere with the views taken by the Courts below. The reasoning given appears to be within the framework of law and the record.

4. Assuming for a moment that the property in question, as sought to be contended by the landlords, has been acquired by the son of the respondent-tenant still, there is no dispute that only one son is staying with his family in the said premises. The respondent-tenant and his family members are still occupying the suit premises. The scheme of the Act, if taken note of, read with the provisions in question, in the facts and circumstances of the present case, it is difficult to accept the submission of the learned counsel for the petitioners-landlords to reverse the concurrent findings that the landlords failed to prove that respondent-tenant has acquired suitable alternative accommodation. Apart from the size, situation etc. it is the number of family members of the tenant is also a relevant factor, which cannot be overlooked and has been rightly considered by the Courts below. In this background, it is difficult to accept that the respondent-tenant has acquired suitable alternative accommodation.

5. There is clear finding given by the Courts

below insofar as the issue regarding default is concerned. There is no default as observed by the Courts below and in absence of any contra material on the record, the said finding is also within the framework of law and the record.

6. Taking into account the above facts and the reasoning given by both the Courts below, I am not inclined to interfere with the concurrent findings. In view of this, the present Writ Petition is dismissed. Rule is discharged. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]